

PROCEEDINGS OF THE COMMON COUNCIL
IN REGULAR SESSION
TUESDAY, SEPTEMBER 8, 1992

CITY OF FORT WAYNE, INDIANA
JOURNAL OF THE PROCEEDINGS
OF THE COMMON COUNCIL

THE COMMON COUNCIL OF THE CITY OF FORT WAYNE MET IN THE
COUNCIL CHAMBERS Tuesday EVENING September 8, 1992,
IN Regular SESSION. PRESIDENT Thomas C. Henry
IN THE CHAIR, COUNCIL ATTORNEY Stanley A. Levine, AND
Sandra E. Kennedy CITY CLERK, AT THE DESK, PRESENT THE
FOLLOWING MEMBERS eight VIZ:

BRADBURY <u>P</u>	EDMONDS <u>P</u>	GIAQUINTA <u>P</u>
HENRY <u>P</u>	LONG <u>A</u>	LUNSEY <u>P</u>
RAVINE <u>P</u>	SCHMIDT <u>P</u>	TALARICO <u>P</u>

ABSENT: 1

COUNCILMEMBER: Long

THE MINUTES OF THE LAST REGULAR August 25, 1992,

SPECIAL _____, 19__

SESSION HAVING BEEN DELIVERED TO THE COUNCIL, WERE, ON MOTION,
APPROVED AND PUBLISHED.

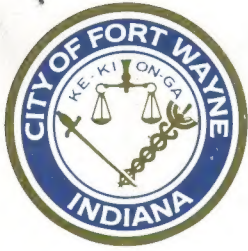
THE COUNCIL THEN ADJOURNED

CERTIFICATE

I hereby certify that I am the duly elected, acting and incumbent City Clerk of Fort Wayne, Indiana, and as such the custodian of the records of the Common Council of said City and that the above and foregoing is the true, full and complete record of the proceedings the Common Council of the City of Fort Wayne, Indiana, for its Regular Session, held on 8th day of September, 19 92, that the numbered ordinances and resolutions shown therein were duly adopted by said Common Council on said date and were presented by me to the Mayor of the City of Fort Wayne and were signed and approved or disapproved by said Mayor and on the dates shown as to each such ordinance and resolution respectively; and that all such records, proceedings, ordinances and resolutions remain on file and record in my office.

WITNESS my hand and the official seal of the City of Fort Wayne, Indiana, this 11th day of September, 19 92.

Sandra E. Kennedy
City Clerk



THE CITY OF FORT WAYNE



Paul Helmke
Mayor

August 25, 1992

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

Dear Councilmembers:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. Z-92-08-08

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
25th day of August 1992.

Robert Hutner
Secretary

/pb

CC: File

FACT SHEET

Z-92-08-08

BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE

Zoning Map Amendment

From B-4 to R-1

APPROVAL DEADLINE**REASON****DETAILS****POSITIONS****RECOMMENDATIONS****Specific Location and/or Address**

The east side of Harris Road south of
Coliseum Blvd.

Reason for Project

New Single Family Subdivision.

Sponsor

City Plan Commission

Area Affected

City Wide

Other Areas

**Applicants/
Proponents****Applicant(s)**

Westbridge Corporation

City Department

Other

Discussion (Including relationship to other Council actions)

17 August 1992 - Public Hearing

See Attached Minutes of Meeting

24 August 1992 - Business Meeting

Motion was made and seconded to return to the ordinance to the Common Council with a DO PASS recommendation.

Of the seven (7) members present, six (6) voted in favor of the motion, one (1) did not vote.

Motion carried.

Opponents**Groups or Individuals**

Joseph Tye/1912 Louisedale
Rhonda Steele/4114 Harris Rd

Basis of Opposition

- the density of the develop-
ment would devalue the exist-
ing homes
-would increase traffic in
area

**Staff
Recommendation**

☒ For ☐ Against

Reason Against

**Board or
Commission
Recommendation****By**

☒ For ☐ Against
☐ No Action Taken

☐ For with revisions to conditions
(See Details column for conditions)

**CITY COUNCIL
ACTIONS
(For Council
use only)**

☐ Pass ☐ Other
☐ Pass (as
amended) ☐ Hold
☐ Council Sub. ☐ Do not pass

DETAILS

POLICY/PROGRAM IMPACT

Policy or Program Change	<input type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start

Date 8 July 1992

Projected Completion or Occupancy

Date 26 August 1992

Fact Sheet Prepared by

Patricia Biancaniello

Reviewed by

[Signature]

Date

26 AUGUST 1992

Reference or Case Number

- a. Bill No. Z-92-08-08 - Change of Zone #520
From RA & B-4 to R-1
The east side of Harris Road south of Coliseum Blvd.
- b. Primary Subdivision Plat of Harris Meadow

Jack Powell, representing the Westbridge Corporation appeared before the Commission. He stated that they are requesting the rezoning from the RA to R-1, because the present RA district requires a minimum lot size of 7200 square feet. He stated that the major reason for requesting the rezoning is to allow them the flexibility to have a few lots that are under 60 feet in width. He stated that the builder he has been working with has asked to have a few 55 foot wide lots available. He stated it will be approximately 12 lots out of 43 lots they intend to develop. He stated that this meets the criteria of the Comprehensive Plan in that it does not establish an undesirable precedent, it is compatible with existing and planned uses to be developed. He stated that this will act as a buffer between commercial development along Coliseum Blvd., to the north and the single family residential to the south. He stated that they feel by putting in more single family residential in the area they will help to stabilize property values in the area. He stated that the downzoning of the area from RA to R-1 will help to preserve the present residential uses in the area as stated in the staff comments.

Mr. Powell stated that with regard to the primary plat they are proposing 43 lots on 13.3 acres. He stated that they housing is designed for the \$65,000 to \$95,000 house range. He stated that he has a commitment from a builder to purchase all of the lots. He stated that the builder would like to put a model home on lot number one and begin selling as soon as possible. He stated that they have already had calls from some of the neighbors requesting information on the project. He stated especially people in the apartment complex. He stated that they are indicating that they like the area and would like to buy a new house in the area. He stated that they believe that the health, safety, convenience and public welfare of the community is being served with this proposal. He stated that with regard to streets they are going to provide curbed streets with sidewalks on both sides of all streets. He stated that they will have an decel and excel lane and a passing blister at the entrance. He stated that they will be meeting the standard city street lighting requirements. He stated that the sanitary sewer will come from West Louisedale Drive to the south and they have secured an easement for that purpose. He stated the water will come from along Harris Road. He stated that the storm drainage will flow eastward to a approximately 2 acre common area. He stated that within the limits of that boundary are two existing water bodies that, at least on a preliminary basis, appear to be adequate to function as detention basins. He stated if they are adequate they do not intend to disturb the heavily wooded area. He stated that pursuant to a staff request they have adjusted the access to that area from an easement situation to a common area,

between lots 18 and 19. He stated that the common area and the detention basin will be maintained by a mandatory membership to the community association. He stated that he has discussed the proposal with all of the local governmental agencies involved and felt he had met all of the conditions that those agencies have placed on it. He stated that there were no objections to any design criteria on the plats. He stated that the proposal is designed to be a moderate priced subdivision with housing that is compatible with surrounding homes. He stated that he was working with a builder who was eager to start construction yet this fall. He stated that they are confident that the project will be very successful and will satisfy the needs of the area while protecting property values.

Steve Smith questioned what type of buffering this development would have from the commercial property on the north.

Mr. Powell stated that they have planned a solid board fence along the north property line to provide a visual buffer and hopefully to help eliminate some of the sound coming from Coliseum Blvd.

Mel Smith questioned if they had planned a recreation area for this development.

Mr. Powell stated that they are 400 feet away from Franke Park. He stated they have discussed the possibility of making a pedestrian easement into the park. He stated that it is conceivable that they could provide a pedestrian way into the park from the north, subject to the approval of the Park Board and the Commission. He stated although there is some significant topography on the common area, there is a possibility for them to do something in that area. He stated if the Commission requests they will look at that more closely.

The following people spoke in opposition to the proposed rezoning and primary plat:

Joseph Tye, 1912 W Louisedale Dr
Rhonda Steele, 4114 Harris Road
Steve Forrester, 3907 Parkside Dr
Robert Winklejohn, 2011 Louisedale Dr

- they felt that the developer was crowding too many homes into the proposed subdivision
- they questioned why the developer could not reduce the number of homes and increase the lot size to be more in line with the existing development in the area
- it was stated that the existing single family homes are sitting on approximately 1 acre each
- they felt that it would be a "slum" in their backyard
- they had looked at some of Mr. Powell's current developments and the construction of the homes is, in their opinion poor, and would not stand the test of time
- they are worried about a "low class" of people buying into this

area

- they have traffic problems already existing on Harris Road and this will add to the congestion
- this would destroy property values in the area
- there are drainage problems in the area currently and this would add to the problem - it was questioned if the developer would be putting in a storm sewer to help this situation
- they have wildlife that inhabit this area and this development would destroy their habitat

Don Schimdt stated that the neighbors should be aware that the rezoning being requested is more restrictive than what currently exists. He stated that the RA would allow for a development of greater density than the rezoning that is being requested.

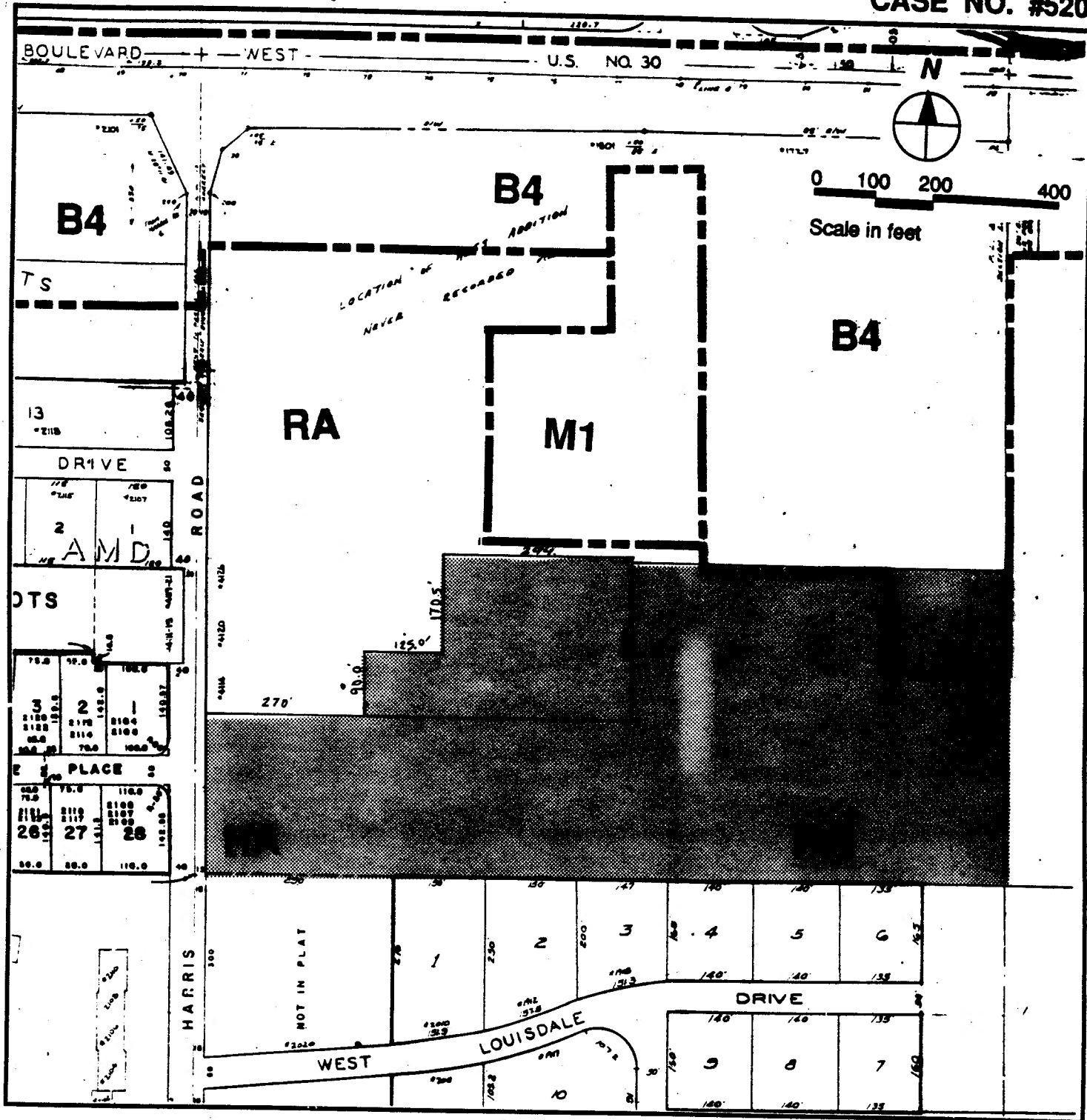
In rebuttal, Jack Powell stated that the present zoning of RA permits 231 apartments on this property and it permits 80 single family dwelling units. He stated that his proposal was for 43 single family dwelling units. He stated that is approximately 3 units per acre and that is a standard single family density. He stated that he felt they would be able to meet all of the requirements of local government relative to engineering, access, storm drainage and so on. He stated that they intend to be good neighbors and they intend to have as minimal an impact as possible on the community.

There was no one else present who spoke in favor of or in opposition to the proposed rezoning or primary development plan.

REZONING PETITION

AREA MAP

CASE NO. #520



COUNCILMANIC DISTRICT NO. 3

Map No. J-26

LW 7-24-92

R1	One-Family	B1	Limited Business	M1	Light Industrial
R2	Two-Family	B2	Planned Shopping Center	M2	General Industrial
R3	Multi-Family	B3	General Business	M3	Heavy Industrial
RA/RB	Residential	B4	Roadside Business	MHP	Mobile Home Park
PUD	Planned Unit Dev.	POD	Professional Office District		

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on August 11, 1992 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated Bill No. Z-92-08-08; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on August 17, 1992.

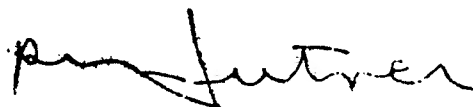
NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO PASS recommendation based on the Commission's following "Findings of Fact".

- (1) the grant will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the use or value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner;
- (3) the need for the rezoning arises from some condition peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;
- (4) the strict application of the terms of the zoning ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the rezoning is sought; and,
- (5) the grant does not interfere substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law.

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held August 24, 1992.

Certified and signed this
25th day of August 1992.



Robert Hutner
Secretary

M. Jack Powell, agent for the Westbridge Company, Inc., on behalf of the Trustee for the William Moser Estate, request a change of zone from RA and B-4 to R-1.

Location: The east side of Harris Road south of Coliseum Boulevard.

Legal: See file

Land Area: Approximately 13.3 acres.

Zoning: RA and B-4.

Surroundings:	North	RA/M1/B4	Open & Commercial
	South	RA	Residential
	East	B4/RA	Commercial & Residential
	West	RA	Residential

Reason for Request: New single family subdivision.

Neighborhood Assoc.: None

Comprehensive Plan: The general land use policies of the comprehensive plan states that development proposals should be compatible with existing and planned land uses and should not establish an undesirable precedent in the area to be developed.

This project is located within the Northwest Sector of the Outer Ring. The goal of the Outer Ring is to encourage growth in a balanced manner that is within or adjacent to existing development in the urban service area.

The down zoning of this area from RA to R-1 would help preserve the present residential uses in this area of Fort Wayne.

Neighborhood Plan: No comment.

Landscape: No comment.

Planning Staff Discussion:

This area can be referred to as a blended residential area consisting of single family, duplex and multi-family developments, with commercial and mini-warehousing uses located along Coliseum Boulevard. The property immediately south has been developed as single family residential, as has the ground east of the Spy Run Creek. The land to the north consists of an

open tract that is currently for sale, and some commercial uses including a mini-warehouse development. While Harris Road serves many residential properties, it also serves as a connector between Goshen Road and Coliseum Boulevard, resulting in increased traffic volumes.

The petitioners intent is to plat a residential subdivision. Under the provisions of the R-1 zoning classification building setbacks are lower, and minimum lot sizes are approximately 15 percent smaller than RA minimums. However the developer may plat lots and set standards that are greater than the minimums.

The existing RA classification could allow a multi-family development of up to 231 units on this tract. A single family subdivision could yield a maximum of 80 units as currently zoned. Development under the provisions of the R-1 classification would reduce possible dwelling units to under one hundred. The proposed primary plat indicates that forty-three lots would be developed.

While there is no existing R-1 zoning in the immediate vicinity, there are established single family uses. The Plan Commission has generally been agreeable to downzoning requests in residential areas. Approval would mandate development to be of a lower density than what could be currently allowed. While approval may result in lots that are relatively small, such lots would still enhance the single family uses in the area.

Recommendation: Do Pass for the following reasons:

- 1) Approval is consistent with the Comprehensive Plan.
- 2) Approval would provide for reduced density in future development.



THE CITY OF FORT WAYNE



Paul Helmke
Mayor

August 25, 1992

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, IN 46802

Dear Councilmembers:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. Z-92-07-03

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
25th day of August 1992.

Robert Hutner
Secretary

/pb

CC: File

FACT SHEET

Z-92-07-03

BILL NUMBER

**Division of Community
Development & Planning****BRIEF TITLE**

Zoning Map Amendment

APPROVAL DEADLINE**REASON**

From POD to B1A

DETAILS**Specific Location and/or Address**

4704 E State B1

Reason for Project

Beauty Salon

Discussion (Including relationship to other Council actions)20 July 1992 - Public Hearing

See Attached Minutes of Meeting

24 August 1992 - Business Meeting

Motion was made and seconded to return the ordinance to the Commoun Council with a DO NOT PASS recommendation.

Of the six (6) members present, five (5) voted in favor of the motion, one (1) voted against the motion.

Motion carried.

POSITIONS**RECOMMENDATIONS****Sponsor**

City Plan Commission

Area Affected

City Wide

Other Areas

**Applicants/
Proponents**

Applicant(s)
Janice Garman/Eric Garman/
Patrick Bruggeman
City Department

Other

Opponents

Groups or Individuals

Basis of Opposition

**Staff
Recommendation**☐ For ☒ Against

Reason Against

- Approval is contrary to the purpose of the existing zoning classification.

**Board or
Commission
Recommendation**

By

☐ For ☒ Against
☐ No Action Taken☐ For with revisions to conditions
(See Details column for conditions)**CITY COUNCIL
ACTIONS
(For Council
use only)**

☐ Pass ☐ Other
☐ Pass (as amended) ☐ Hold
☐ Council Sub. ☐ Do not pass

DETAILS

POLICY/ PROGRAM IMPACT

Policy or Program Change	<input type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start

Date 15 June 1992

Projected Completion or Occupancy

Date 26 August 1992

Fact Sheet Prepared by

Date 26 August 1992

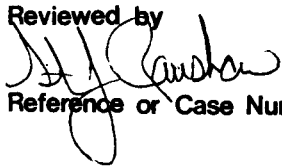
Patricia Biancaniello

Reviewed by

Date

26 AUGUST 1992

Reference or Case Number



- a. Bill No. Z-92-07-03 - Change of Zone #514
From POD to B-1-A
4704 E State Bl

Yvonne Stam made a matter of record five (5) letters that had been sent to the Commission in opposition to the proposed rezoning.

Janice Garman, stated that she was the potential buyer for 4704 E State Blvd., now owned by Patrick Bruggeman. She stated that the only reason that she was before the Commission asking for a B1A classification, rather than using the POD designation and approval of the Board of Zoning Appeals, is that she has to be able to allow the hairdressers that work in the salon to sell their own beauty aids to their clients. She stated that using the POD with a stipulation of no retail sales, would not allow her, or the hairdressers that will work in the salon, to run the business in the fashion it was meant to be run. She stated that everyone that will work in the salon would be self employed. She stated that they do all of their own books, pay all of their own taxes, buy all of their own supplies and make all of their own appointments. She stated that in essence it is eight (8) small businesses within the business. She handed out to the Commission a booklet of exhibits. Exhibit A was a letter written by Scott Cassingham, to Pete Mallers, attorney for Patrick Bruggeman, which states that on May 28, 1992 that the Board of Zoning Appeals agreed that Beauty Salons and their operators are now considered professional. She stated that it also states that they are considered a permitted use in a professional office district, as long as they do not have any retail sales. She stated that in no way could she tell these private and professional business owners that they can not fully service there own clientele with beauty aids. She stated it would be like an optician telling their clients they could examine their eyes but not sell them glasses or contacts, or an audiologist who could examine ones hearing, but not sell them a hearing aid. She stated that the majority of hair salons have 20 feet of store front selling nothing but beauty supplies. She stated that this one will not have that kind of sales. She noted that in Exhibit B it showed that a scale layout of the building showed that each operator would have only a 15" x 16" space on the left side of their own space for retail sales items. She stated that no other space in the building would be used for retail. That space would be taken up by seating for clients or the equipment used in the salon. She noted that in Exhibit C is a copy of the statement from the Central States Beauty Supply when she picked out the equipment. She stated that no where on the supply list shows any retail shelving. She noted that Exhibit D was a copy of her profit and loss statement that was given to Grabill bank. She stated that it shows that this salon will not have any amount of retail income. Ms. Garman showed the Commission a picture of the site indicating the structure she was interested in purchasing set backs quite a distance from the road. She stated that the building was hidden by trees and bushes and looks like a residence. She stated that with no large sign, anyone not connected with the salon would not no that it was there. She noted that Exhibit E is the layout of the park. She stated that

there is a proposed building in front of the one she wants to purchase. She stated that this salon could in no way be a typical drive by beauty salon. She stated that she has received support from the surrounding property owners in East State Professional Park. She stated that the majority of owners have signed an acceptance form on her behalf. She stated that these forms are noted as Exhibits F & G. She stated that Exhibit H is a letter from the surrounding property owners to the Commission. She stated that they have noted in the letter that if the property is rezoned they would amend the restrictive covenants to allow her to buy the property and to run her business in the fashion it was meant to be. She stated that in the original petition they asked for only $\frac{1}{4}$ of an acre to be rezoned. She stated now it is a full acre. She stated that she does not plan on buying the full acre she only needs the $\frac{1}{4}$ acre. She stated that the only way she could reapply was to make a substantial difference in the petition. She stated that the petitioners are not trying to "put anything over" on the Commission with the petition. She stated that they are willing to limit the use of the property, after it is rezoned, to a beauty salon, an optician or an optometrists office. She stated that one of the reasons she was given for the denial of the first rezoning request was that the rezoning would bring down property values. She stated that in Exhibit H it states, "We support the petition to rezone a B1A for 4704 E State Blvd., because we feel that the proposed use will complement the existing uses within this office park and will in no way have a negative impact on our property values or on the professional atmosphere of this office." She stated that the people who wrote the letter were the ones who had the most to lose by the granting of the rezoning to B1A. She noted that Exhibit I is an area map of this property and the surrounding area. She stated that on the southeast corner of the map is a B1A zoning. She noted that there is a beauty salon by the name of Great Lengths Hair and Nail Artistry advertising that they are located in East State Professional Park. She noted that their unit is zoned B-1-A, that this rezoning has already set a precedent in the park. She questioned what the difference was between a unit of a building or a whole building being rezoned. She stated that Great Lengths has been in this location for over six years and in that six years there been no proof that the salon and its retail has brought down the integrity or the property value. She questioned why they could not rezone the property and contract it to a special use. She wanted to know why she could not have a "paper" stating, that if this B1A property could not be sold as a beauty salon, that it would revert back to a POD classification.

Robert Hutner stated that we do have quite a precedent both from Board of Zoning Appeals and from the Plan Commission against spot zoning. Mr. Hutner questioned what becomes of the ruling of the Board of Zoning Appeals if this rezoning were to be approved. The Board of Zoning Appeals has made a judgement that no retail sales be allowed.

David Wright stated that he felt she still had the authority to file for change of zoning.

Steve Ranshaw stated that the request that went before the Board of Zoning Appeals was an interpretation of the Ordinance. The question being is a beauty salon permitted in any POD. He stated that was an all encompassing interpretation, so now that will effect other POD's and other beauty salons, it was not necessarily site specific to this POD. They are asking now to rezone it to a district that would permit retail sales, because they could not work within the condition that the Board of Zoning Appeals placed on it.

Yvonne Stam questioned Commission counsel to explain why it is not possible to rezone with a contract for a specific use.

David Wright stated that your are trying to make a contract with the Plan Commission for a change of zoning and it is contrary to law.

John Shoaff questioned if everyone in the professional park signed the petition in support of this rezoning.

The petitioner stated 5 of the 7 owners signed the petition.

John Shoaff questioned if Exhibits B C & D, relating to the retail sales, if they were presented to the Board of Zoning Appeals at the time of the request to them.

Ms. Garman stated that they were not submitted at the Board hearing.

Don Schmidt stated that since the BZA has classified them as a professional, and that is the same designation that is given to optometrists, and optometrists are allowed to sell glasses and ancillary supplies to their customers, he could not see any reason why a beauty operator, since they are rated as professional, would not be allowed to do exactly the same thing. He stated that he did not understand the BZA not permitting this limited type of retail since they do permit it for optometrists. He stated that he felt an appeal should go back to the BZA, because he felt they had given her a wrong ruling. Don Schmidt said he questioned why the petitioner could not be permitted to have that limited retail sales to a customer, but an optometrists can sell the glasses to someone who has had an examination. He stated that he did not see the difference.

Mr. Wright stated that there may not be. He stated it was the restriction placed by the BZA on her request as far as permitting beauty salons in POD's. He stated that they have a right to place reasonable conditions. He stated that he did not know if she could appeal back to the BZA, but perhaps she should appeal to the Circuit Court on a Writ of Certiorari.

Don Schmidt asked the petitioner is she had taken it back to the BZA or beyond.

Ms. Garman stated she was informed by the staff that the next step would be to come here.

Steve Ranshaw stated that when Ms. Garman came into the office that staff gave her a list of options that could be followed. One was coming before the Plan Commission with a significantly modified request, which is what she chose to do, or go back to the Board of Zoning Appeals for a Use Variance, or to find a new location with the appropriate zoning.

Robert Wright stated that he shared the belief that this should certainly be included with other professionals. He questioned if she had a contract with Mr. Bruggeman, the current property owner.

Ms. Garman stated that she has an option to buy if it is zoned so that she can have retail sales in her salon.

Robert Wright stated that his reservation is that she was requesting a zoning that would allow for a much more extended use. He stated that he would be more comfortable with approving some exception to the rule or a variance.

Greg Purcell, Executive Director of Community & Economic Development, stated that this went before the Plan Commission and before City Council back in April for a zoning to B1A for a smaller parcel and was denied by both the Commission and Council. He stated that they went to the Board of Zoning Appeals, not with a variance request, but their attorney advised them to go with an interpretation issue before the Board of Zoning Appeals. He stated that interpretation issue was, "is a beauty salon a profession?" under the professional office district category. The BZA made a determination, and it was the staff's recommendation on that determination that you could make a determination that they were professional, but that retail sales would be inappropriate. From a very practical, down to earth standard, from the staff's perspective, we have to enforce these ordinances that are adopted by the City Council, Plan Commission and Board of Zoning Appeals. He stated that this was not for a variance. A variance would have been a different matter for this individual case and would have been case specific. When you talk about the interpretation, that encompasses everything. When do you stop having an encroachment of retail sales in a professional office district? And when is getting a prescription from a doctor as you are leaving the office the same as going to a retail pharmacy, which is dealing with retail products? He stated that you place the staff in a very, very difficult kind of position when you try to do that type of interpretation. He stated for those sorts of reasons, retail was determined to be not the primary concern here. And when is a business really retail, and when is it really professional? How many shampoos, clothing items, necklaces, jewelry and that sort of thing, and at what point do you want us to go in and say you have crossed the boundary line, "You are no longer a beauty salon, you are a retail sales outfit." And are we going to have staff out there spending an inordinate amount of time trying to grapple with

these sorts of things? If you want to allow this request, and this is a very persistent request, he would counsel them that rezoning is not the appropriate method of dealing with the case. He stated that he would suggest they table the matter and put in a request for a variance to go before the Board. Hear the merits of the individual variance, and make a determination on that case, and not open the door for universal interpretation. He stated that if it is the inclination of the Commission he would suggest tabling the matter, suggesting filing for a specific variance, specific to this site for the beauty salon, with any conditions the BZA wants imposed upon it. He stated not the wholesale rezoning, it would open up a lot of retail that would be inappropriate with the planned office district.

Steve Smith stated that clearly the POD ordinance does not permit retail sales, and that is not interpretive. Whether you classify beauticians as professionals consistent with optometrists who dispense contact lenses, glasses, frames and supplies, that may be an enforcement problem that were not enforcing the ordinances that we already have on the books. He stated that if it does go back to the BZA for a variance he would counsel the members of the BZA to consider the aspect that they did the right thing in the first place, by being consistent with the ordinance, by not permitting retail sales. Mr. Smith stated that this is a comment in regards to a question raised by the petitioner, contract zoning is clearly against the law in the state of Indiana and we cannot make zoning based on a deal where you promise to this or that. The zoning does run with the land, until it is changed. He stated that the representation of the case is weighty and meaningful, but still we look at the precedent, and once that is rezoned we have no control over the property.

Bob Hutner made a motion to table the request and refer it back to the BZA.

Steve Smith noted that as a point of order that this was a public hearing and a motion was out of order.

Don Schmidt stated that he would like to respond to a comment that Mr. Smith made regarding a doctor, or a lawyer or an optometrist being a different type of professional than a beauty operator. He stated that he would not argue with that, with the exception of how the word is used in this particular ordinance. He stated that the letter that they have a copy of from Mr. Cassingham, who is the interpreter of the ordinances that pertain to this, made the comment under Item 1, that beauty salons and operators are professionals for the purpose of this section. He stated that makes them equal to all the other professionals that you named that are already doing a limited type of retail. He stated that he felt she has a very clear case of being able to do exactly what this particular statement says, because the others are permitted to do that. And to say that we are now going to say that optometrist can not sell glasses, I don't think that is a reasonable thing to bring up.

John Shoaff stated he assumed the rules against retailing have a practical intent. He stated that he assumed the intent is that they are trying to limit traffic, they are trying to limit the need for large parking lots, advertising signs, etc. He stated it seems to him there has been a clear demonstration here that the kind of retail sales that go on here do not create those kinds of traffic or parking or advertising sign needs. He stated that it seemed to him they would fall within the kind of activity that an optometrist falls within. He questioned Mr. Purcell if there were grounds for an appropriate and practical variance request.

Mr. Purcell stated that the difficulty that she will have to demonstrate is that there is a hardship. He stated that the hardship cannot be involved with her particular business or incidence, it has to be a hardship related to the property. He stated she will have to make the case and the Board will have to find that there is some hardship. He stated it will be somewhat of a difficult case to make. He stated that the Board did say she is a professional. She can go out and start the business today, she just cannot have any retail sales.

Don Schmidt questioned Mr. Purcell if he was saying that she was less professional than someone else, because you permit other people to have retail sales.

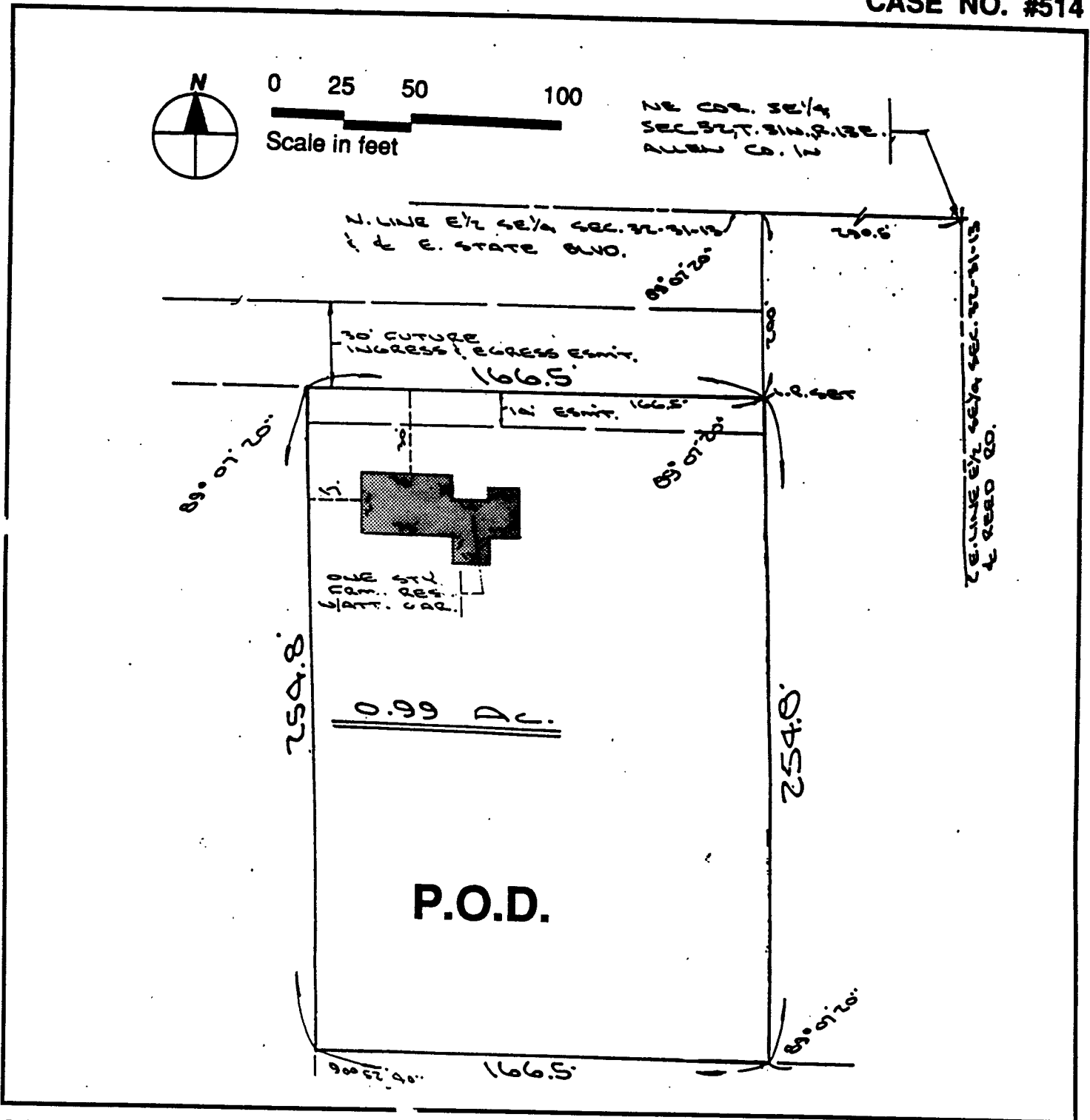
Wayne O'Brien, Planner II with CED, stated that he did not want to speak for the Board of Zoning Appeals, because he didn't know that anyone on the staff level was sufficiently knowledgeable about their entire motivation for the action they took. He stated that his understanding of the interpretation of that action is their finding was that a beauty salon operation, to the extent that it did not include retail sales, was a professional operation for the terms of this ordinance. At the point where a beauty salon included retail sales it was no longer considered to be a professional operation. He stated he thought that distinction may eliminate some of the cloudiness that is in the air.

There was no one else present who spoke in favor of or in opposition to the proposed rezoning.

REZONING PETITION

AREA MAP

CASE NO. #514



COUNCILMANIC DISTRICT NO. 2

Map No. S-14
LW 6-22-92

R1	One-Family	B1	Limited Business	M1	Light Industrial
R2	Two-Family	B2	Planned Shopping Center	M2	General Industrial
R3	Multi-Family	B3	General Business	M3	Heavy Industrial
RA/RB	Residential	B4	Roadside Business	MHP	Mobile Home Park
PUD	Planned Unit Dev.	POD	Professional Office District		

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana on July 14, 1992 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-92-07-03; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on July 20, 1992.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO NOT PASS recommendation based on the following "Findings of Fact".

(1) the grant will be injurious to the public health, safety, morals and general welfare of the community;

(2) the use or value of the area adjacent to the property included in the rezoning will be affected in a substantially adverse manner;

(3) the need for the rezoning does not arise from conditions peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;

(4) the strict application of the terms of the zoning ordinance will not constitute an unusual an unnecessary hardship to this property;

(5) the grant interferes substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law; and,

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held August 24, 1992.

Certified and signed this
25th day of August 1992.



Robert Hutner
Secretary

Janice M. Garman, Eric W. Garman and Patrick J. Bruggeman request a change of zone from P.O.D. (Professional Office District) to B-1-A.

Location: 4704 E. State Blvd.

Legal: See file

Land Area: Approximately 0.99 acres

Zoning: P.O.D.

Surroundings: This site is contained within a Professional Office District.

Reason for Request: Beauty salon/shop

Neighborhood Assoc.: None

Comprehensive Plan: The land use policies of the Comprehensive Plan state that rezoning and development proposals should be compatible with existing and planned land uses and should not establish an undesirable precedent in the area to be developed.

This property is located within the Middle Ring. The goal of the Middle Ring is to maintain investments and prevent deterioration in existing neighborhoods.

Neighborhood Plan: No comment.

Landscape: Rezoning to B1A loses the ability to orderly plan the development of the surrounding POD area and introduces intensive land uses out of character with the surrounding State Street landscape.

Planning Staff Discussion:

The Plan Commission will probably remember this site as being the subject of a similar petition in April of this year. A B-1-A was petitioned for at that time and was denied by both the Plan Commission and Common Council. The petitioner sought approval through the Board of Zoning Appeals, and the Board determined that a beauty salon was an acceptable use in a POD providing that no retail sales would be included in the operation of the salon.

The bylaws of the Plan Commission prevent the same or substantially similar application from being resubmitted for a period of one year from the date of the final decision on the

prior petition. It was determined that since this petitioner had included additional ground, the petition may be substantially different from what had been previously heard.

The purpose of the Professional Office District as set forth in the ordinance is "designed to provide specific areas where professional offices, businesses compatible with these offices, and certain public and quasi-public uses may be developed into a center with the assurance that retail and other commercial uses with incompatible characteristics will not impede or disrupt their use". Permitted uses are limited to offices only-administrative, business, government and professional. The Board of Zoning Appeals has recently determined that a beauty salon is a permitted use within a P.O.D. providing that there is no retail activity connected with such salon.

The area surrounding this P.O.D. development is primarily zoned as either residential or other Professional Office Districts. The Commission has supported professional office development east of Coliseum Boulevard, while limiting retail and services uses to the Coliseum Boulevard frontage, or west of Coliseum on State Boulevard. There are apartments located to the south off of Reed Road, with single family homes located on the east side of Reed Road, and on the north side of State Boulevard. Other offices are located to the west, between this development and Coliseum Boulevard.

In the past, both the Plan Commission and the area residents have expressed their concern over possible commercial intrusion into the area. In 1988, the Statewood Park Association petitioned for a downzoning in order to protect the single family nature of the area to the east. Both the Plan Commission and Common Council have strongly supported professional office development between Coliseum Boulevard and Reed Road, preserving the ground to the east for low intensity residential uses, and allowing the POD development to serve as a transitional zone, buffering the residential areas from the more intense commercial uses along Coliseum Boulevard. (The overall integrity of this development was broached in 1986 when a unit of a building was rezoned by council over the recommendation of the Plan Commission. No other incompatible zonings have been approved since that time.)

As the Commission is aware, rezoning petitions are evaluated against an established criteria that includes the Comprehensive Plan, conditions and character of uses, conservation of property values, and the principle of responsible development and growth. Approval of this request would not be consistent with the purpose of the zoning classification, would not represent responsible growth, and in fact could be detrimental to the area. Approval of the petition could result in a negative impact on adjacent property values, and would be inconsistent with the Comprehensive Plan. The Professional Office District designation includes site development controls which protect the character, integrity, and natural features of the site. A B-1-A zoning would allow

potentially substantial site changes to occur. As the commission is aware, a number of retail uses are permitted under the B-1-A classification, and it would not be possible to rezone a parcel by contracting to a specific use.

Additionally, it has been the policy of the Plan Commission to discourage the removal of a parcel from a planned district unless extenuating circumstances are present. We are not aware of any circumstances that would support this property being rezoned. In fact, the need for this rezoning does not arise from conditions peculiar to the property, nor to characteristics of the general neighborhood, but simply from the fact that the intended use is not permitted within this classification.

Recommendation: Do Not Pass for the following reasons:

- 1) Approval is contrary to the purpose of the existing zoning classification.
- 2) Approval could have a negative impact on property values in the area, and would be inconsistent with the Comprehensive Plan.
- 3) Approval is not consistent with the principles of responsible development and growth.